

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3281 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HANS KAMAL ATAMPRAKASH GROVER

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner

Mr. P.G. Desai, Public Prosecutor for Respondent No.1

MR BM MANGUKIYA for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/10/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr. Manguikia, learned advocate for opponent No.2 and Mr. P.G. Desai, learned Public Prosecutor for the State of Gujarat. At the request of the parties' learned advocate this application is taken on hand today for final disposal.

2. The opponent No.2 filed the FIR in Umra police station against the present petitioner alleging that he

at any time prior to 4th August 1998 committed the offences punishable under Sections 465, 467, 468 and 384 of the Criminal Procedure Code. Having come to know about the complaint lodged against him, the petitioner by this application prays to quash the complaint exercising the powers under Section 482 of the Criminal Procedure Code.

3. In short, it is the case of the respondent No.2 that within the local limits of Village Radhu in Choryasi Taluka there is a land bearing Survey No. 62/1 which is divided into several plots. The plot No.3 thereof belongs to him and he is in possession thereof. Formerly it belonged to Ranchhodhai Keshubhai. He had sold the same to Rambhai Naranbhai. He purchased the plot from Rambhai Naranbhai Patel. The petitioner did not have any right, title and interest in that plot but to grab the said plot any how he joining hands with his accomplices, henchmen & allies made an attempt to forge his power of attorney. The petitioner is a head-strong person. He therefore did not file the complaint in police station on 3rd August 1998 he thought it fit to lodge the complaint directly before the Judicial Magistrate (F.C.), Surat and accordingly filed the same. It is also his case that against some of the persons of the gang of the petitioner Regular Civil Suit No. 47/90 is filed in the Court of the Civil Judge (S.D.) at Surat. Though the suit is pending, the petitioner in order to grab the plot any how hires and conspires with head-strong persons and instigates them to commit the wrong paying good round sum. The petitioner is also having close connectons with anti-social element as the petitioner deals in lands etc.

4. The petitioner thought that against him for some oblique motive false complaint was filed. For quashing the same the present application is filed under Section 482 of the Criminal Procedure Code. It is his contention that the petitioner is not the criminal, he is a successful builder having good reputation in the society. He is having lucrative business. His competitors envy his sound position and prosperity. They had determined to balk and vanquish so that he the checkmated-petitioner might experience serious set-back in his field. Hence the complaint is got filed by some persons enviously to ruin him. It is also his contention that for the last few days he had to come in conflict with Assistant Commissioner of Police Shri P.C. Thakur. The Assistant Commissioner of Police by way of retaliation planned to harass him. The complaint is the result of the said design the Police Commissioner had hatched so as to make the petitioner to succumb to unjust demands. The

complaint is, therefore as urged, required to be quashed.

5. Mr. P.G. Desai, the learned Public Prosecutor for the State of Gujarat submits that when the police investigation is going on, it would not be just and proper on the part of this Court to throttle the same. If at all the Court finds after the police investigation is over, ofcourse considering the materials, that no case is made out, it would be open to the Court to pass appropriate order. The scope of enquiry in such case is limited and the powers under Section 482 of the Criminal Procedure Code are to be exercised sparingly and not as a matter of course. Reading FIR it appears that a *prima facie* case about commission of the offence is made out. The application is therefore liable to be dismissed.

6. Mr. Mangukia, the 1d. advocate representing the opponent No.2 has supported the learned Public Prosecutor and has further submitted that the FIR cannot be the decisive factor. The materials collected during the investigation would be the decisive factor. At present when investigation is not over, it would be premature to hold one way or the other. It is also his contention that the case alleged in this application is illbased, it does not inspire confidence, and to an extent it is misguiding as well as illusory. The petitioner is not the party to the suit pending in the Court of the Civil Judge (S.D.), Surat. A tenancy case under Bombay Tenancy Act relating to the plot in question was initiated, and against the decision of the ALT, appeal was preferred by the opponent No.2. which came to be dismissed. Hence he has preferred the Revision Application before the Secretary which is pending and interim stay is granted as a result of which the opponent No.2 is in possession of the plot in question. Placing the reliance on a decision of the Supreme Court rendered in the case of State of U.P. Vs. O.P. Sharma - AIR 1996 SC 2982, he further contends that this Court cannot proceed to consider the versions of the accused given out in the petition vis-a-vis the complaint and enter into the debatable area of deciding which of the versions is true. It is further contended, relying upon decision rendered by this Court in Pradip Tibrewal Vs. State of Gujarat & Anr. - 1998 Criminal Law Journal 559 that merely because dispute is pending before Civil Court, the same cannot oust the jurisdiction of the Criminal Court, and the proceeding of the police investigation cannot be quashed.

7. About the scope of enquiry, it may be stated that the powers of quashing the criminal proceeding are to be exercised sparingly and with circumspection and that too

in the rarest of rare cases. It would not be just on my part to embark upon the enquiry as to the reliability or genuineness or otherwise of the allegations made in FIR or the complaint because extraordinary or inherent powers do not confer arbitrary jurisdiction on the Court to act according to its whim or caprice. If perusing the FIR or the complaint lodged and also the documents annexed therewith it appears to the Court that *prima facie* the contents thereof constitute commission of one or another offence, it would not be just and proper on the part of this Court to exercise powers under Section 482 and quash the complaint or the FIR. But if the complaint and evidence collected make out no case *prima facie* against the accused, the same has to be quashed because in that case the valuable time of the Court should not be wasted for holding the trial only for the purpose of formally completing the same and to pronounce the judgment on the future date. Looking to such scope of enquiry the complaint lodged and the documents if at all filed along with the complaint are to be persuded for the purpose of ascertaining whether the contents thereof *prima facie* constitute commission of any of the offences.

8. In this case, the copy of the FIR is produced at Annexure 'G' alleging that the petitioner has committed the offences punishable under Sections 465, 467 and 468 as well as 384 of the I.P.C. The offences punishable under Sections 465, 467 and 468 relate to forgery or forgery for the purpose of cheating and forgery of valuable security. The offence of forgery is constituted when it is established that a false document is made with an intention to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with the property or to enter into any express or implied contract or with an intention to commit fraud. Whenever therefore a complaint about the offence of forgery is filed the averments made therein must *prima facie* show that the offence may have been committed and for that purpose necessary facts about the commission of the offence is required to be stated. Reading the copy of the FIR produced at Annexure "G", nothing further other than what is stated hereinabove is stated. What is alleged is that with the intention of grabbing the plot No.3 the petitioner joining hands with head-strong persons desperado or hitmen engineers different plans or tries to make out a false power of attorney, although the suit in the Court of the Civil Judge (S.D.) at Surat is pending. No case with regard to the commission of the offence of forgery is alleged, no iota thereof one can find therein. What is alleged is that the petitioner is making an attempt to do one or the

another wrong or is making necessary preparation for committing the wrong. When the averments made in the FIR do not even *prima facie* show about the commission of any of the offences of forgery, the powers under Sec. 482 of the Cr.P.C. are required to be exercised.

9. About the offence of extortion also, no allegation whatsoever is found in the FIR except the statement in Column No.6 wherein Section 384 of the Indian Penal Code is mentioned which is, in my view, not sufficient. The offence of extortion is committed when some one intentionally puts any person in fear of death or injury and thereby dishonestly induces the person so put in fear to deliver any person any property or valuable security. Reading carefully in the FIR, nowhere I find the allegation that petitioner intentionally put the opponent No.2 or any of his family members in fear of death or injury so as to dishonestly induce him or his family members to hand over the possession of the plot to him. When accordingly, there is no whit in FIR so as to infer that one or the another offence might have been committed and police investigation is necessary, simply on the basis that the petitioner is making an attempt or planning to usurp the land, or is likely to commit the wrong, the police investigation cannot be permitted or continued and allowed to reach its normal end.

10. Faced with such situation, Mr. P.G. Desai, the learned Public Prosecutor draws my attention to a decision of the Allahabad High Court in the case of Ram Lal Yadav & Others Vs. State of U.P. & Ors - 1989 Criminal Law Journal 1013, wherein it is laid down that it is not open to the Court to interfere with the investigation which is in progress because the power to investigate is unfettered under the scheme of the Code and that is made clear in several authorities of the Supreme Court. The Court's interference into the police investigation is not approved, even though investigation is unauthorised. In this case therefore this Court may not interfere with the police investigation which is in progress, to do so would be unjust. I cannot give the seal of approval to the contention raised. In the decision of the Allahabad High Court cited by Mr. P.G. Desai, no doubt, it is made clear, that the Court should not ordinarily interfere with the police investigation and quash the same, but further it is made clear that if it is that reading the FIR or the complaint that no case even *prima facie* about the commission of any of the offences is made out, it is open to the Court to exercise its powers under Article 226 of the Constitution and not

under Section 482 of Cr.P.C. At this stage, a mention about the Supreme Court's decision is necessary. In State of Haryana and others Vs. Ch. Bhajan Lal and others - AIR 1992 S.C. 604, it is held that this Court can exercise the powers under Section 482, Cr.P.C., if the case is covered by the guidelines given therein. It is observed in this regard by the Supreme Court that inherent powers under Section 482 of the Criminal Procedure Code that in the following category of cases, inherent powers can be exercised either to prevent the abuse of process of Court, or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and give an exhaustive list of myriad kinds of cases wherein such power should be exercised. The categories of the cases prescribed by the Supreme Court may be quoted thus;

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
5. Where the allegations made in the FIR or

complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The case on hand would be covered by the first category mentioned which lays down that where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused the court can exercise powers u/s. 482. As discussed above, the allegations in the FIR, even if they are accepted in their entirety and taken at their face value, they do not *prima facie* constitute any offence or make out a case against the accused. When that is the case, in view of the decision of the Supreme Court, it is open to me to exercise the powers under Section 482 of the Criminal Procedure Code.

11. On the basis of the submission made before me, it appears, that when in tenancy case the opponent No.2 has failed (of course revision is pending and stay is granted in his favour) in Regular Civil Suit No. 47/90, his application for temporary injunction is also dismissed by the learned Civil Judge (S.D.), Surat, and when he has also failed in appeal before the District Court at Surat, to remedy his grievances qua the plot in question, the opponent No.2 has dialed the wrong number by filing the FIR. If at all the petitioner is making certain preparations to usurp his plot or disturb his possession,

it is open to him to file necessary suit before the Civil Court for appropriate remedy. The criminal action is not the proper remedy in law. When to remedy the civil wrong, criminal law is invoked, the powers under Section 482, Criminal Procedure Code are required to be exercised in favour of the petitioner.

12. For the aforesaid reasons, this petition deserves to be allowed. In the result, this petition is allowed. The FIR lodged in Umra police station, copy of which is produced at Annexure 'G', as well as the police investigation thereof which is in progress are hereby quashed. Rule accordingly made absolute.

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